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C O N F I D E N T I A L SECTION 01 OF 03 ZAGREB 000763

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SUBJECT: OSCE REVIEW MEETING FINDS THAT PROGRESS CONTINUES
TO NARROW OUTSTANDING ISSUES

REF: ZAGREB 707

Classified By: Rick Holtzapple, PolEcon Counselor, for reasons 1.4 (b)
& (d).

SUMMARY

1. (SBU) On October 21, the annual OSCE-GoC Plenary meeting to review progress on remaining issues within the OSCE Office's mandate took place. Four Croatian ministers attended as well as heads of mission from the OSCE, EC, UNHCR, Finland, Greece, France and the U.S. The meeting addressed significant progress on the handling of war crimes cases. Handling of in absentia convictions and deficient war crimes indictments, many of which were brought in the late 1990's, remains the primary issue under discussion. The GoC said new Instructions issued on October 9 will compel prosecutors to review both kinds of cases and weed out particularly weak ones. On the issue of refugee returns, all those present agreed the GoC had accelerated progress on provision of housing to returnees, although the GoC will likely need until next spring to complete all of its 2008 target as well as the remaining small number of 2007 cases. These include some 154 instances in which beneficiaries have either asked to withdraw from the program, sought a delay, or simply failed to pick up keys for units awaiting them. END SUMMARY.

2. FM Jandrokovic opened the meeting by noting that Croatia had made significant progress on the remaining issues within the OSCE Office's mandate since the last session of this sort in September 2007. In his opening remarks, OSCE Office Head Amb. Jorge Fuentes acknowledged a difference of opinion as to which issues still remained within the OSCE's mandate after last December's PC decision to close the previous Mission and open a much-reduced Office with a more limited mandate. This mandate included only the monitoring of war crimes cases and reporting on the residual aspects of housing care for returnees. Nonetheless, Fuentes argued, the OSCE Office needed to "go to the edge" of its current mandate in order to ensure that the remaining issues could be successfully resolved.

WAR CRIMES ISSUES

3. (U) In his remarks, newly appointed Justice Minister Ivan Simonovic said that the resolution of the issues under consideration with the OSCE were a high priority for him, and for the entire GoC, as evidenced by the fact that three of his ministerial colleagues were also at the session. Simonovic went on to note that four of the issues that had been under debate with the OSCE, as well as the European Commission and the ICTY office, were now considered either resolved or agreed, with only their final implementation remaining. These "closed" issues were i) procedures for the use of video testimony; ii) provision of adequate witness support and witness protection; iii) increased inter-state

cooperation in the prosecution of war crimes cases; and iv) new procedures for the designation of court-appointed defense attorneys.

¶4. (U) This left two open issues on which consensus between the GoC and the OSCE had not yet been reached: i) ensuring balance in prosecutions (i.e., that ethnic Croat and ethnic Serb defendants would face equivalent charges for similar acts), and ii) what to do about the 118 cases where some 400 defendants (all or almost all of whom are ethnic Serbs) have already been convicted in absentia for war crimes. Simonovic argued that both of these open issues had now been addressed by an instruction from the Chief State's Attorney Mladen Bajic to all prosecutors on October 9, 2008. On the issue of balance in prosecutions, Bajic's letter laid out specific criteria that had to be met before bringing a case. Most importantly, the crime described must qualify as a war crime, and the evidence presented must be sufficient to assign responsibility for the crime to the individual to be named in the indictment. Bajic told all prosecutors that they must review all on-going war crimes cases based on these criteria, and lower, dismiss or drop charges in cases that do not meet the criteria. Bajic instructed prosecutors to report on the results of their review by no later than Jan. 1, 2009, or face the threat of dismissal.

¶5. (U) Regarding in absentia verdicts, Minister Simonovic recalled that the GoC had previously agreed that any person convicted in absentia could request a retrial upon their appearance in Croatia, whether voluntarily or via extradition. He added that the GoC had recently agreed to further liberalize this process, passing legislation

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permitting the convicted persons to request a retrial of their case even without physically returning to Croatia. Now, he said, the October 9 Instructions from the Chief State's Attorney stipulated that even in the absence of such a request for a re-trial, prosecutors should pro-actively review all 118 cases to see which might merit priority reconsideration. The target date for completing these reviews was also January 1, 2009, so that as soon as the new legislation entered into force, the courts and prosecutors could initiate appropriate action.

¶6. (SBU) In response, Ambassador Fuentes noted that, after more than two years of less than impressive progress on these issues, the past few months had seen significant movement on the resolution of outstanding issues. He described the October 9 Instruction Letter to prosecutors as "impressive." Ambassador Bradtke noted that there had also been excellent progress on the Ademi-Norac 11 bis case from the ICTY, which in fact was supposed to be the primary focus of the OSCE Office's mandate on war crimes since the PC's decision of December 2007. Fuentes claimed that there had been "a lot" of discussion in the PC about whether all of the issues Minister Simonovic had discussed were within the Office's mandate, and the PC's answer had clearly been that they are. Both Vincent Degert, head of the European Commission delegation, and French Ambassador Francois Saint-Paul, representing the EU Presidency, agreed that Croatia had made significant progress on the issues discussed. Saint-Paul further noted that any reluctance by Croatia not to touch on some issues would "not be productive", but added that Croatia's willingness to review in absentia cases showed that Croatia was "not a weak state, but a strong state" that can serve as an example to the region. Degert also noted that the measures described were positive, but that proper implementation of these steps would be crucial.

HOUSING FOR RETURNEES

¶7. (U) Petar Cobankovic, Minister for Regional Development, provided a status report on Croatia's efforts to process all applications for "housing care" from the state and then

accommodate all those who qualified, primarily those who had lost their occupancy and tenancy rights during or after the war, by the end of 2009. Cobankovic acknowledged that the government would not succeed in getting all 1400 of their "target" cases for 2007 into permanent lodgings by the end of this year. He said that 104 cases had either withdrawn their applications or asked for them to be postponed, and a further number of about 50 cases had yet to pick up keys for units that were ready for occupancy. The GoC was still trying to determine what it should do in these 154 cases. A smaller number of cases also faced construction delays and similar problems. Cobankovic added, however, that the GoC had done better in trying to meet its 2008 target of an additional 1400 units. As of October 21, he said that the government had allocated 867 of those units, and hoped to complete a couple hundred more by the end of the year. He believed that by spring 2009, the process should be complete for both the 2007 and 2008 targets.

18. (U) Cobankovic said that the GoC had estimated that this would leave a final pool of 2462 qualified applicants whose cases would need to be resolved in 2009. As of the end of September, the GoC had approved 2162 cases for housing care, which was 300 less than forecast. But the GoC continued to review applications, and Cobankovic said that any additional approvals this year, either from new decisions or if previous refusals were overturned upon review, could still be incorporated into the 2009 program. Construction Minister Marina Matulovic Dropulic also noted that final accommodation for cases in Dalmatia might be slower than elsewhere in the country because of market conditions. Even at prices higher than the government's limit per square meter the housing on offer was of insufficient quality. Therefore, in order to provide adequate housing, the government was going to build new units, but this might take some extra time. Dropulic also made a plea for the international community to reach agreement with the GoC regarding what to do in cases where the intended beneficiaries had not accepted provided housing, since it was not in the GoC's interest to have housing that was ready just sit vacant.

19. (U) Ambassador Fuentes agreed that the OSCE Office had to show some flexibility regarding measures of the GoC's performance, as long as any shifts in performance standards were justified. While not all 2007 cases are resolved, he said that the target was now essentially met. The OSCE continued to perform field checks, and was satisfied with the overall quality of the apartments, and that the population of

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beneficiaries did in fact consist of an adequate number of ethnic Serb returnees. Both EC HOM Degert and UNHCR Office Head Wifried Buchhorn echoed that they had seen a noticeable acceleration in the housing care program over the past several months. Degert added that he was also pleased by progress on the issue of convalidation of working time for pensions, where the GoC agreed several months ago to accept applications from people who had remained in Serb-controlled areas during the war. Degert said his information was that some 2000 applications had been received, with around ten percent already resolved.

OTHER ISSUES

10. (U) Ambassador Fuentes commented that from the Office's perspective the "Sarajevo Process" was now completed. He suggested to the GoC that it might consider holding a Ministerial by mid-2009 to formally close that process. He also noted that his Office had prepared a notional budget for 2009, but that this was an administrative requirement within the OSCE, and did not pre-judge any decision on whether the Office's mandate would be extended. He did say, however, that if the Office were to be extended, he saw little prospect for further reductions in the staff or budget; the 2009 proposal included just an 11 percent reduction from the

2008 budget. Fuentes noted that he would be in Vienna in early November to meet with Member State representatives, and that the Office's annual progress report would be transmitted in mid-to-late November, to allow as much information as possible about Croatia's actions to be included. Ambassador Nyroos of Finland added that the CiO was already engaged in preparations for the Helsinki Ministerial on December 4-5, and that she was certain that the question of the OSCE Office in Croatia's mandate extension would come up in that context.

FM Jandrovic commented that the GoC would take a "rational" position in that debate, but said nothing more specific.

COMMENT

¶11. (SBU) In private conversations with us (and we understand with USOSCE in Vienna as well), the GoC has indicated that it will be willing to accept an extension of the OSCE Office into 2009. But the Croatians want to be absolutely sure that this would be the final year of the mandate. Based on the discussion at this Plenary meeting, we believe there is an argument even now to say that the OSCE's mandate has been substantially fulfilled, and that the remaining implementation of commitments can be monitored without an expensive Office still here. Even the OSCE's own staff has admitted to us that their work in Croatia is becoming increasingly routine and technical. Comments from EU Ambassadors, however, indicate that many of them believe the OSCE needs to remain here to pressure Croatia.

¶12. (C) Posts' view is that the only two issues of real substance remaining are dealing with in absentia convictions and deficient war crimes indictments, and ensuring that arbitrary or ethnically discriminatory rejections of housing care applications are overturned. Once the GoC satisfactorily implements its October 9 Instructions to prosecutors, and once it has identified specific accommodation for all the remaining housing care caseload (including a satisfactory review of all rejected applications to date), then we believe that even the hold-outs among the EU states would need to acknowledge that the OSCE's tasks are essentially complete. There would be no measures or issues for the OSCE to negotiate with the GoC, and the task for the international community will be simply monitoring Croatia's delivery on its commitments, something that diplomatic missions should be able to do without a need for OSCE staff in country. We expect that some states, such as the Netherlands or Belgium, would still be unsatisfied, but we can not permit them to impose such an open-ended political and financial burden on the OSCE as a whole. END COMMENT.
Bradtke